

Background and Budget Proposal

Several notices were issued to Taxpayers demanding GST/tax on several teething and interpretational issues for the period pertaining to initial years of GST. These notices not only created operational difficulties for such Taxpayers, but also led to increase in unnecessary litigation. Recognizing that most of these disputes have attended finality through amendments made in law, clarification issued through circulars and instructions, judicial decisions passed by Courts, the GST Council in its 53rd meeting held on June 22, 2024 had recommended the introduction of a new provision in the Central Goods and Service Tax Act, 2017 (**CGST Act**). This would *inter-alia* provide that in the event demand of GST is paid on or before March 31, 2025 in a dispute under Section 73 of the CGST Act for the period FY 2017-18 to FY 2019-20, payment of interest and penalty will be waived off.

In line with this recommendation made by the GST Council, the Finance Bill, 2024, has proposed to insert Section 128A of CGST Act for providing **“waiver of interest or penalty or both relating to demands raised under section 73, for certain tax periods”**. It is proposed that Section 128A of CGST Act will be applicable from the date as may be notified to the persons chargeable with Tax for a dispute pertaining to the aforementioned period or a part thereof in accordance with the following provisions:

- Show Cause Notice (**SCN**) or a statement issued under Section 73(1) or Section 73(3) of CGST Act respectively, demanding GST/tax along with interest and penalty without allegation of fraud, wilful mis-statement, or suppression of facts;
- An Order-in-Original (**OIO**) issued under Section 73(9) of CGST Act confirming the demand of GST/tax along with interest and penalty arising out of the aforesaid SCN;

- An Order-in-Appeal (**OIA**) issued under Section 107(11) of CGST Act confirming/ modifying the demand of GST/tax along with interest and penalty arising out of the aforesaid OIO;
- A Revision Order issued under Section 108(1) of CGST Act enhancing or modifying the demand of GST/ Tax along with interest and penalty arising out of the aforesaid OIA;
- Where a SCN is issued under Section 74(1) of CGST Act alleging fraud and wilful mis-statement but the Appellate Authority directs the adjudicating authority to pass an Order under Section 73(1) of CGST Act.

However, the benefit of the aforesaid proposed provision will not be applicable in respect of the following:

- Any amount payable on account of erroneous refund;
- An appeal or writ petition which has been filed and the same is either pending before the authority or has not been withdrawn.

Impact

In the event the Taxpayer makes full payment of GST/tax on or before the date to be notified by the Government, interest and penalty arising out of such demand shall stand waived off and the proceedings shall be deemed concluded subject to fulfilment of prescribed conditions.

However, proviso to the said section states that interest and penalty so paid shall not be available as refund to the Taxpayer. Also, once the amount of Tax has been paid and the proceedings are deemed to be concluded no appeal can lie before the First Appellate Authority or the Goods and Service Tax Appellate Tribunal (**GSTAT**).

ELP's Insights

The intention of the Government seems to be in line with promoting ease of business and reducing tax litigation. Over the years, the Government has made several attempts to reduce the burden from the Taxpayers by either allowing them extensions in filing statutory returns or permission to file appeal beyond the period of prescribed dates. The proposal to insert Section 128A of CGST Act will aid in reduction of tax litigation. However, there are certain issues such as where a Taxpayer is in receipt of a notice/order involving multiple issues. In this case can he litigate the demand raised against one single issue and claim waiver for the balance. Also, in cases where a Taxpayer is in receipt of a notice/order involving multiple years, whether he can litigate the demand raised against one particular year and claim waiver for the issues under balance years?

Further, it must be also noted that the recommendations of the GST Council meeting provided waiver of interest and penalty subject to payment of disputed tax on or before March 31, 2025, and did not prescribe fulfilment of any other additional condition. Therefore, it will be important to wait until such conditions are brought into effect by way of amending Central Goods and Service Tax Rules, 2017 (**CGST Rules**).

Considering that Rules generally provide mechanism for supplementing the provision of the Act, it is only reasonable to expect that additional **Forms** will only be introduced in order to capture the payments made under the proposed Section 128A. However, the possibility of the Government introducing new conditions cannot be ruled out.

